उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक Cr.A.No 641/05 सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

SB: HON'BLE SHRI DHIRENDRA MISHRA,J.

APPELLANT — Vishwanath alias Guddu, son of Guwal Ghik, aged about 30 years, occupation Agriculturist, resident of Dokada, Konsatoli, P.S. Kansabel, Distt. Jashpur (CG)

versus

RESPONDENT — State of Chhattisgarh Through – P.S. Kansabel, District Jashpur (C.G.)

11-10-2007

Shri A.N. Bhakta, Advocate for the appellant.

Shri Neeraj Mehta, Panel Lawyer for the State.

2. This appeal is directed against the judgment of conviction and order of sentence dated 7-7-2005 passed in S.T. No. 126/2004 whereby the learned Sessions Judge, Jashpur has convicted the appellant under Section 376 of I.P.C. and sentenced him to undergo R.I. for 7 years with fine of Rs. 250/-, and in default of payment of fine, to further undergo R.I. for 15 days.

3. Briefly stated the facts of the case are that on 31-8-2004 at about 6.00 p.m. when the prosecutrix was in her home, the accused came there and took her with him to a nearby field on the pretext that he shall be giving her fish and thereafter threw her on the ground in the forest and raped her and started running from the place of incident. When the prosecutrix started crying, he returned back and threatened her that if she cries, he will throw her after

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

murdering and also threw a stone at her which hit her on her forehead and blood started oozing. After registration of the offence, prosecutrix was sent for medical examination where Dr. (Smt.) R. Toppo (P.W. 3) examined her and gave her report of Ex. P-6.

4. After completing the investigation, charge sheet was filed. During trial, 10 witnesses were examined. The appellant denied the circumstances appearing against him and stated that he has been falsely implicated because of a land related dispute. However, learned trial Court has convicted and sentenced the appellant as mentioned above.

5. Learned counsel for the appellant submits that before medical examination of the prosecutrix, consent of her natural guardian was not obtained which vitiates the medico legal report of the prosecutrix. He further submitted that there is discrepancy regarding the place of incident as in one place, it is stated that it occurred in forest whereas in other place, it is stated that it occurred in field. It is also argued that there is no evidence that there was slightest penetration of the male organ of the appellant in the vagina of the prosecutrix and in the absence of the above evidence, the offence as defined under Section 375 of the I.P.C. is not complete.

6. On the other hand, learned counsel for the State has supported the impugned judgment.

7. Conviction of the appellant is based on the statement of the prosecutrix P.W. 1 and P.W. 3 Dr. (Smt.) R. Toppo who examined the

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(20)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

-3-

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

prosecutrix after incident. P.W. 1 Prosecutrix has stated that on the date of incident at 6.00 p.m., she was in her home alone. At that time, accused came to her house, enquired about her mother and elder father. When she informed that both are not present in the home, he asked her to accompany him on the promise of giving fish, whereupon she accompanied him upto a field near forest where he committed rape after taking out her underwear and after undressing himself. He also threatened her not to shout. As a result of the intercourse, blood started oozing from her vagina. After committing the crime, he assaulted her by a stone over her head and fled from there. She lodged the report in police station Kansabel on the following day vide Ex. P-1. Before examining her medically, her consent was obtained. In para 9 of her cross-examination, she has stated that the appellant is her uncle. She has denied the suggestion of the defence that there is a quarrel between her father and the accused. In lengthy cross-examination of this witness, the defence has tried to impeach the credibility of this witness by suggesting that the injury which she claims to have received in the incident could not be caused on the place of incident, however the discrepancy present in the cross-examination is not of such a serious nature which may make the testimony of this witness untrustworthy or unreliable particularly when her statement is duly corroborated by the medical evidence as Dr. R. Toppo (P.W. 3) who has examined the prosecutrix on 1-9-2004 i.e. next day of the incident, has stated that secondary

[पीछे

उच्च न्या...य, छत्तीसगढ़, बिलासपुर

(21)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

-4-

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

sexual character of the prosecutrix had not developed. A lacerated would was present over left frontal area of the head, an abrasion of size of 2 x 2 cm was present on medial surface of left thigh. An abrasion in size of 3 x 2 cm was present over right buttock. On examination of her private part, she noticed one lacerated wound reddish of size of 3 x ¼ x ¼ cm vertically present over left labia majora, one abrasion of size of 1 x ¼ cm on the right labia majora. There was rupture of hymen, tenderness and reddishness over vulva and lacerated wound of size of 4 x 1 x 1 cm on vagina. She has opined that the injuries described by her were caused by hard and blunt object and the injuries present over her private part could be caused due to intercourse and duration of injuries has been opined between 24-26 hours old from the time of examination. She has categorically opined that the prosecutrix has been raped.

8. Thus from the statement of the prosecutrix and further the statement of the prosecutrix is duly corroborated by medical evidence, the prosecution has been able to establish the charge against the appellant beyond all reasonable doubt. There is no illegality or infirmity in the impugned judgment.

9. In the result, the appeal being devoid of substance is liable to be dismissed and it is accordingly dismissed.

Sd/-
Dhirendra Mishra
Judge

[पीछे देखिये